

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

KELLEY AMADEI, et al.,

Plaintiffs,

-against-

KIRSTJEN NIELSEN, et al.,

Defendants.

Civil No. 17 Civ. 5967  
(NGG)(VMS)

**NOTICE OF RULE 30(b)(6) DEPOSITION  
OF UNITED STATES CUSTOMS AND BORDER PROTECTION**

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 30(b)(6) and the Local Rules for the United States District Court for the Eastern District of New York, Plaintiffs will take the deposition of United States Customs and Border Protection (“CBP”) before an authorized officer at 10:00 a.m. on September 17, 2018, at the offices of Covington & Burling LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018. The deposition will be recorded by stenographic means, and will be taken before a court reporter, notary public, or other officer authorized and empowered by law to administer oaths.

PLEASE TAKE FURTHER NOTICE that in accordance with Rule 30(b)(6), Plaintiffs request that CBP designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf as to each of the topics of examination set forth in the attached Schedule A and definitions set forth in the attached Schedule B.

August 15, 2018.

COVINGTON & BURLING LLP

By: John B. Picker

Joshua B. Picker

Neil K. Roman

COVINGTON & BURLING LLP

The New York Times Building

620 Eighth Avenue

New York, NY 10018

(212) 841-1000 (Telephone)

(212) 841-1010 (Fax)

Cecillia D. Wang

Katrina Eiland

AMERICAN CIVIL LIBERTIES UNION

39 Drumm Street

San Francisco, CA 94111

(415) 343-0775 (Telephone)

(415) 395-0950 (Fax)

Hugh Handeyside

AMERICAN CIVIL LIBERTIES UNION

125 Broad Street, 18th Floor

New York NY 10004

(212) 549-2500 (Telephone)

Clara J. Shin

Samantha Choe

COVINGTON & BURLING LLP

One Front Street

San Francisco, CA 94111

(415) 591-6000 (Telephone)

(415) 591-6091 (Fax)

Lala R. Qadir

COVINGTON & BURLING LLP

One CityCenter

850 Tenth Street NW

Washington, DC 20001

(202) 662-5013 (Telephone)

(202) 778-5013 (Fax)

*Attorneys for Plaintiffs*

**SCHEDULE A**  
**Deposition Topics**

- 1) CBP's organizational structure and chain of command including, without limitation, at the CBP JFK Port of Entry.
- 2) Recordkeeping practices with respect to instances in which:
  - a) CBP interacts with passengers traveling on domestic flights.
  - b) CBP interacts with passengers at locations in U.S. airports outside of a Customs security area.
  - c) CBP assists ICE by meeting domestic flights carrying a noncitizen subject to a removal order.
  - d) CBP receives and responds to requests for assistance from other law enforcement or government agencies.
  - e) CBP provides periodic or incident-based reports or summaries to law enforcement agencies, other government entities, or members of Congress (including after-action reports following incidents).
  - f) CBP receives and responds to inquiries from the media, airlines, airports, and other third parties.
- 3) CBP training and training materials relating to procedures for searches and seizures of passengers on commercial aircraft including, without limitation, constitutional and other legal limitations on those searches and seizures.
- 4) Regulations, policies, standard operating procedures, and practices applicable to CBP regarding identification of passengers on commercial aircraft including, without limitation, the "By-Pass approach."
- 5) Regulations, policies, standard operating procedures, and practices applicable to CBP pertaining to communications with flight crews on domestic flights.
- 6) Regulations, policies, standard operating procedures, and practices applicable to CBP regarding requests to CBP for assistance from law enforcement or other government agencies.
- 7) Regulations, policies, standard operating procedures, and practices applicable to CBP regarding reports CBP provides to law enforcement, other government entities, or members of Congress (including after-action reports following incidents).
- 8) Regulations, policies, standard operating procedures, and practices applicable to CBP regarding responses to inquiries from the media, airlines, airports and other third parties.

- 9) CBP's authority, if any, to search or detain passengers traveling on domestic flights or present at locations within a U.S. airport that are outside of a Customs security area.
- 10) The Incident, including CBP's actions taken before, during, and following the Incident and CBP's authority, if any, to take such actions.
- 11) The basis for CBP's responses to Interrogatories served by Plaintiffs in this action.
- 12) The steps taken by CBP to preserve documents relevant to this action and the persons involved in taking those steps.
- 13) The steps taken by CBP to search for and produce documents responsive to Plaintiffs' requests for production and the persons involved in taking those steps.
- 14) Whether any document potentially responsive to Plaintiffs' requests for production in this action was discarded or destroyed in whole or in part and, if so, the circumstances under which the document was discarded or destroyed.

**SCHEDULE B**  
**Definitions**

1. This Notice of Deposition incorporates definitions from The Uniform Definitions in Discovery Requests in Local Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”), including the following:

- a. “Communication” means transmittal of information (in the form of facts, ideas, inquiries, etc.).
- b. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a)(1)(A). A draft or non-identical copy is a separate document.. Documents include communications.
- c. “Person(s)” means any natural person or any legal entity, including any business or governmental entity or association.
- d. “Concerning” means relating to, referring to, describing, evidencing, or constituting.
- e. “All,” “any,” and “each” means encompassing any and all.
- f. Use of the singular form of any word includes the plural and vice versa.

2. “Defendants” means the following persons: Kirstjen Nielsen, in her official capacity as Secretary of Homeland Security; Kevin McAleenan, in his official capacity as Commissioner of U.S. Customs and Border Protection; Leon Hayward, in his official capacity as Acting Director, New York Field Operations of U.S. Customs and Border Protection; Francis Russo, in his official capacity as Port Director, JFK International Airport Port of Entry of U.S. Customs and Border Protection; Ronald D. Vitiello in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; Thomas Decker, in his official capacity as

Director, New York Field Office, Enforcement and Removal Operations of U.S. Immigration and Customs Enforcement; David Jennings, Director, San Francisco Field Office, Enforcement and Removal Operations of U.S. Immigration and Customs Enforcement; John Does 1 and 2 in their official capacity as U.S. Customs and Border Protection Officers; and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on behalf of Defendants or subject to Defendant's control.

3. "Plaintiffs" means plaintiffs Kelley Amadei, Carola Cassaro, Laura Cucullu, Corey Fields, Anne Garrett, Amy Lanigan, Matt O'Rourke, Eric Polk, and Karen Polk.

4. "CBP" means United States Customs and Border Protection, including any and all employees, representatives, agents, consultants, or other individuals acting on its behalf.

5. "Incident" means the events leading up to, including, and following the identification checks conducted by two U.S. Customs and Border Protection ("CBP") agents of passengers deplaning from Delta Airlines Flight 1583 at New York's John F. Kennedy International Airport ("JFK") on February 22, 2017.

6. "Commercial aircraft" means any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered, as defined by 19 C.F.R. § 122.1.

7. "Customs security area" means the Federal inspection services area at any airport accommodating international air commerce designated for processing passengers, crew, their baggage and effects arriving from, or departing to, foreign countries.

8. "Domestic flight" means a flight on a scheduled airline between locations within the United States, including the portion between locations within the United States of flights that

originate outside of the United States or continue on to a final destination outside the United States.

9. “Flight crew” means any and all employees of a scheduled airline, as well as representatives, agents, consultants, or other individuals acting on behalf of a scheduled airline.

10. “ICE” means United States Immigration and Customs Enforcement including any and all employees, representatives, agents, consultants, or other individuals acting on its behalf.

11. “Scheduled airline” means any individual, partnership, corporation or association: (1) Engaged in air transportation under regular schedules to, over, away from, or within the U.S.; and (2) Holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity, issued by the Department of Transportation pursuant to 14 CFR parts 201 and 213, as defined in 19 CFR § 122.1.

12. “United States” or “U.S.” means the territory of the several States, the District of Columbia, and Puerto Rico, including the territorial waters and overlying airspace, as defined in 19 CFR § 122.1.

13. References to any entity include the entity and any person or entity under its control, including any present and former subsidiaries, predecessors, successors, officers, directors, agents, employees, shareholders, partnerships, general and limited partners, and any aliases, code names, or trade or business names used by any of the above.

14. References to any person include the person and any person or entity under that person’s control, including all present and former subsidiaries, predecessors, successors, officers, directors, agents, employees, shareholders, partnerships, general and limited partners, and any aliases, code names, or trade or business names used by any of the above.